IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. NO. 20151 OF 2005

Date of Decision: May 10, 2007

Anup Garg …Petitioner

Versus

Debts Recovery Tribunal and others …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ashish Aggarwal, Advocate,
for the petitioner.

Mr. Kasturi Lal, Advocate,
for the respondents.

JUDGMENT

M. M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 13.12.2005, passed by the Recovery Officer, Debts Recovery Tribunal, Chandigarh-respondent No. 2 (P-5).

Brief facts of the case are that Oriental Bank of Commerce, Sohna Branch, Gurgaon-respondent No. 3 (to be referred as 'the Bank') obtained a recovery certificate from the Debts Recovery Tribunal, Chandigarh, against M/s Z.Z. Zippers Pvt. Ltd. and others. On the basis of the recovery certificate, respondent No. 2 put the mortgaged property of the judgment debtors (M/s Z.Z. Zippers

and others) on auction, vide order dated 20.9.2005. As per the proclamation of sale, the auction was to be conducted at the site i.e. Plot No. 107, Razka MEO-Industrial Area, Sohna, District Gurgaon, on 5.11.2005, against the reserve price of Rs. 22,00,000/-. On 21.10.2005, the Bank published an auction notice in the Hindi Daily Amar Ujala (New Delhi Edition), wherein besides other properties, the property of M/s Z.Z. Zipper and others was also put to auction for recovery of an amount of Rs. 33,83,471/- as on 31.7.2005 besides further interest @ 12% per annum with quarterly rests till realization of entire amount. In the said auction notice, the details with regard to the title of case and recovery certificate number, amount recoverable, reserve price, name of auctioneer, date and time of auction and specification of properties were given. The following terms and conditions were also mentioned in the auction notice:-

"TERMS & CONDITIONS OF AUCTION:

1) The bidder shall deposit a demand draft being 5% of Reserve Price in favour of Recovery officer, DRT, Chandigarh as a condition precedent to participate in the auction.

2) The highest bidder shall deposit 25% of the auction amount with the auctioneer immediately after the auction 5% deposit made shall be adjusted. The auctioneer can allow 24 hours time to deposit 25% of auction amount. Remaining 75% of the auction amount shall be paid within 15 days of the auction with the Recovery Officer.

Failure to deposit the amount would entail in forfeiture of the earnest money.

3) That the Court Auctioneer is authorized to call from the prospective bidders proof of his/her satisfaction of their having funds to deposit 25% of the bid amount.

4) That the sale shall be subject to the Provisions as contained in the Second Schedule to the Income Tax Act, 1961.

5) The undersigned reserves its right to withdraw any property or portion thereof at any stage before confirmation.

6) That the sale will be confirmed by the undersigned.

7) The undersigned shall not be responsible for any error, misstatement or omission in this proclamation. The Auctioneer will notify other terms and conditions at the site/place of auction.

8) In case of agriculture land NRI would be eligible to participate in auction on submitting permission from RBI."

The petitioner being interested to buy the property, participated in the auction held on 5.11.2005 and deposited an amount of Rs. 1.10 lacs i.e. 5% of the reserve price with the Court Auctioneer. Other than the petitioner, four other persons also deposited 5% of the reserve price. It is claimed that the petitioner

specifically inquired from the Branch manager of the Bank with regard to any encumbrances on the property and whether vacant possession of the property would be handed over to the highest bidder after confirmation of the sale by the Recovery Officer. On the assurance given by the bank authorities, the petitioner gave the highest bid of Rs. 22.10 lacs and was declared successful. He was given 24 hours time to deposit 25% of the bid amount and the balance 75% was to be deposited within 15 days from the date of auction. On 8.11.2005, the petitioner deposited an amount of Rs. 4,42,500/- to make 25% of the bid amount.

It has been asserted that after the auction was over, the petitioner came to know from the people of the area including the chowkidar of the property that the owner of the property, namely, Shri Yash Pal Arora had already created number of encumbrances on the property, inasmuch as, the property was mortgaged with the Punjab and Sind Bank and Punjab National Bank. The aforementioned banks had already filed original applications before the Debts Recovery Tribunal at Delhi for recovery of their dues. He also stated to have found that the owner of the property was also to pay huge arrears of the Electricity Department. The petitioner approached the concerned authorities of the Bank to seek clarification regarding encumbrances on the property in question and the cases filed by the Punjab and Sind Bank and Punjab National Bank in the Debts Recovery Tribunal at Delhi. However, no satisfactory reply was given. He was told that the vacant possession could be handed over only after sale of plant and machinery which was lying in the

premises, through the process of Court. The petitioner did not deposit the balance 75% of the auction bid within 15 days of the auction due to the above mentioned facts.

A perusal of paper book shows that on 5.9.2002, the Punjab National Bank had filed an application before the Recovery Officer, DRT, Chandigarh stating that the property in question was mortgaged with the said bank. The Punjab National Bank also filed an Original Application for recovery of Rs. 16,49,105/- along with interest before the Debts Recovery Tribunal, New Delhi. The Debts Recovery Tribunal, Delhi, had also issued a notice, dated 1.12.2005, to M/s Z.Z. Zippers and its Directors/Guarantors for appearance in O.A. No. 84 of 2004, which was filed by Punjab and Sind Bank for recovery of Rs. 35,34,608/-.

On coming to know about the above facts, the petitioner also made an application, dated 12.12.2005, before the Recovery Officer, Debts Recovery Tribunal, Chandigarh, stating all the facts and showing his willingness to pay the balance amount of 75% of the bid amount in case the vacant possession of the property was given to him. Alternatively it was prayed by the petitioner that amount of Rs. 5,52,500/-, which was deposited by him with the Court Auctioneer, be returned to him along with interest. The Recovery Officer, DRT, Chandigarh, passed the impugned order dated 13.12.2005 (P-5), forfeiting the amount of Rs. 5,52,500/- to the bank and further ordered that the same be adjusted in the account of defaulter by observing as under:-

> " As per office report, AP deposited only 25%

amount i.e. Rs. 5,52,500/- and he did not deposit remaining amount. There is no ground to accept the application of AP to return the money to him. Hence the amount of Rs. 5,52,500/- is forfeited to bank and let the money be released to bank and bank is directed to adjust the money in the account of defaulter.

To come up on 3/1/2006.

Sd/- ”

Having heard the learned counsel for the parties, we are of the considered view that this petition merits acceptance. Firstly, the petitioner had not been informed about the encumbrances created by the Punjab National Bank and Punjab and Sind Bank, who were to recover huge amount against the property in question. It is likely that the petitioner would not have participated in the bid for the property in case such vital information was not suppressed in the auction notice. It is undisputed that the property in question had three encumbrances which were known to the Bank. The property was mortgaged with Punjab National Bank, New Delhi, and with Punjab and Sind Bank, New Delhi. There were electricity dues running into lacs of rupees in respect of the same property. Moreover, Second and Third Schedule appended to the Income-tax Act, 1961 (for brevity, ‘the IT Act’) and the Income-tax (Certificate Proceedings) Rules, 1962 (for brevity, ‘the Rules’), have been made applicable by Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity, ‘the 1993 Act). Section 29 of the 1993 Act reads as under:-

> "29. Application of certain provisions of Income-tax Act. - The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:
>
> Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act."

A perusal of Section 29 of the 1993 Act shows that it extends the application of Second and Third Schedule of the IT Act to the recovery of dues due to the banks and financial institutions. Likewise, it also extends the application of the Rules to such recoveries and dues. It is pertinent to notice that the 1993 Act was enacted on 27.8.1993 to provide for establishment of Debts Recovery Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Therefore, the provisions of the Second and Third Schedule of the IT Act as well as the Rules are fully applicable.

Rule 52 and 53 as contained in the Second Schedule of the IT Act reads as under:-

> " 52. Sale and proclamation of sale – (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof

as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

53. Contents of proclamation – A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,

(a) the property to be sold;

(b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for the recovery of which the sale is ordered;

(cc) the reserve price, if any, below which the property may not be sold; and

(d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property."

A perusal of the aforementioned rules shows that the Tax Recovery Officer is to direct for attachment of any immovable property or such portion of the property as may be considered necessary to satisfy the certificate and may also order its sale. In

case, such a property is to be sold then the Tax Recovery Officer is required to issue a proclamation of the intended sale to be made in the language prevalent in the district. A significant provision has been made in clause (d) of Rule 53, which provides that the Tax Recovery Officer is under an obligation to disclose any such details which he may consider material for a purchaser to know in order to enable him to judge the nature and value of the property. The encumbrances created on the property in dispute which include mortgage with two banks and the electricity dues would necessarily constitute material information for a purchaser to know for judging the nature and value of the property. Even, in Form No. ITCP 13 of the Rules, which has been prescribed for proclamation for sale under Rule 52 of the Rules, the details of all encumbrances to which the property is subjected and claim, if any, which have been put forward to the property or any other known particulars having bearing on the nature and value of the property, are required to be given. According to the proclamation issue on 20.9.2005 (P-6), Column Nos. 3, 4 and 5 have been left blank, which require the Recovery Officer to fill up the details. For facility of reference, Column Nos. 1 to 5 are reproduced hereunder:-

"SCHEDULE OF PROPERTY

No. of Lots	Description of property to be sold with the names of the other co-owners where the property belongs to the defaulter & any other persons as owners	Revenue assessed upon the property or any part thereof.	**Details any encumbrance to which the property liable.**	Claims, if any which have been put forward to the property and any other known particulars being on its nature and value.
1.	2.	3.	4.	5.

Property of J.D. No. 1

Plot No. 107, (HUDA) at Razka MED- Industrial area, Sohana, Distt. Gurgaon (Haryana)

Given under my hand and seal at Chandigarh 20th day of Sept., 2005."

A perusal of the aforementioned Column Nos. 4 and 5 makes it abundant that the details of encumbrances to which the property is liable along with the claims, if any, made against the property or other known particulars bearing on its nature and value have not been filled up. It is clearly a case of flagrant violation of the statutory rules which required the details to be furnished. There is total misrepresentation on the part of the respondents alluring the petitioner to come forward for the purchase of the property in question. In such a situation, the minimum which could be done in favour of the petitioner is to refund the whole amount which has been deposited by him on the date of auction and thereafter with interest.

In view of the above, this petition succeeds. The impugned order dated 13.12.2005 (P-5), passed by the Recovery Officer, Debts Recovery Tribunal, Chandigarh, is quashed. The amount deposited by the petitioner shall be released to him with interest @ 12% per annum from the date of deposit till the date of its payment. The needful shall be done within a period of one month from the date a certified copy of the order is received by the respondents. If the needful is not done within a period of one month then the rate of interest would increase to 15%.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 10, 2007
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